



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPARTMENT OF EDUCATION
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20-740
<b>Regulation title</b>	NUTRITIONAL GUIDELINES FOR COMPETITIVE FOODS SOLD IN THE PUBLIC SCHOOLS
<b>Action title</b>	To establish nutritional guidelines for all foods sold to students in the public schools during the regular school day that are not part of the national school lunch or school breakfast programs.
<b>Date this document prepared</b>	September 14, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This regulation, required to be developed by Section 22.1-207.4, *Code of Virginia*, and pursuant to requirements in SB 414 (2010) will:

1. establish nutritional guidelines for all “competitive foods” sold to public school students on school grounds during regular school hours.
2. be based on the Institutes of Medicine’s (IOM) Recommended Standards for Competitive Foods in Schools or the Alliance for a Healthier Generation’s Competitive Food Guidelines.
3. require periodic review by the Board of Education with assistance from the Department of Health to ensure the nutritional guidelines developed as part of the regulations remain current, science-based, and consistent with any changes to federal law or regulations on competitive foods.
4. require all local school boards to adopt the state nutritional guidelines as part of their existing wellness policies.

These required regulations are intended to implement nutritional standards for competitive foods sold in the public schools in response to concerns about increasing childhood obesity and its effects and the general goal of increasing the nutritional quality of foods offered in the school setting.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Legal authority: SB 414 (2010) enacted on April 13, 2010, as Chapter 718 and codified as Section 22.1-207.4, *Code of Virginia*.

Promulgating entity: Board of Education in cooperation with the Department of Health.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The regulations are required by statute (Section 22.1-207.4) to be developed. In addition, the rising rate of obesity in children has become a major health concern, both because of its impact on childhood health and its potential effect on the development of chronic disease in adulthood. In response to this growing concern, attention has focused on the need to establish nutrition standards for foods in schools. Federal regulations governing the national school lunch and breakfast programs establish nutrition standards for school meals. In addition, federal regulations require every school division to have wellness policies that address nutrition and physical activity; the content and implementation of these policies have been at the discretion of the local school divisions.

Statewide nutritional guidelines for competitive foods sold to students during the school day would strengthen the local wellness policies and help address some of the factors that impact childhood obesity, as well as increase the nutritional quality of foods offered in the school setting.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

This regulation will include specific nutritional guidelines for foods sold to students throughout the school day on school grounds that are not part of the national school lunch or breakfast programs. The nutrient/ingredient areas to be addressed in these standards will include, but not be limited to, calories, fat, sugar, and sodium content. Evidence-based guidelines established by the Institutes of Medicine (IOM) or the Alliance for a Healthier Generation shall be used in establishing these statewide standards.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

None. The regulations are required by statute to be developed.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action including, but not limited to, 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, e-mail, or fax to Catherine Digilio-Grimes, Director of School Nutrition Programs, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, (804) 225-2074, fax (804) 786-

3117, e-mail [Catherine.Digilio-Grimes@doe.virginia.gov](mailto:Catherine.Digilio-Grimes@doe.virginia.gov). Written comments must include the name and address of the commenter; please also submit an e-mail address for use by the agency for subsequent communications. In order to be considered, comments must be received by the last day of the public comment period. A public hearing on the NOIRA will not be held.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The Board of Education is required by SB 414 to work with the Department of Health, the School Nutrition Association of Virginia, the American Heart Association, the American Cancer Society, the American Academy of Pediatrics, Virginia chapter, the Virginia Wholesalers and Distributors Association, the Virginia Automatic Merchandising Association, and other stakeholders to conduct research necessary for the development of the regulations. Consequently, the agency is using the participatory approach in the development of the proposed regulations.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

In regards to category one above, the regulations will increase the nutritional quality of competitive foods offered to students in the public schools with the goal of increased student health.